

case and thus requested the Board to deny appellant's petition for reconsideration. Appellant replied on February 20, 2008 that he clearly specified errors of law in the Board's decision.

Turning first to appellant's request for oral argument on the petition for reconsideration, the request is denied. Whether oral argument shall be allowed on a petition for reconsideration rests within the discretion of the Board.¹ The granting of oral argument, in the opinion of the Board, would unduly delay the finality of this case and would not serve the interests of justice.

With regard to appellant's petition for reconsideration, the Board notes that the standard for granting a petition for reconsideration is that the Board's decision must contain an error of fact or law warranting further consideration.² The Board has duly considered the matter and finds that appellant's petition for reconsideration should be granted.

The Board has held that the Office's failure to inform a claimant in writing of his or her right to inspect and copy government records relating to an overpayment is reversible error.³ Here, the Office failed to so inform appellant. The Board will therefore modify its November 16, 2007 decision to find that the case is not in posture for decision on the issue of overpayment. The Board will remand the case for the Office to reissue its preliminary determination with proper notice of the right mandated by 20 C.F.R. § 10.431(c). After such further action as may be necessary, the Office shall issue an appropriate final decision on the issue of overpayment.

Appellant's argument that the Office failed to comply with 20 C.F.R. § 10.617(f) lacks merit. That section does not mandate notice of a right to respond to agency comments following the release of a requested hearing transcript. Moreover, on January 3, 2007 the Office notified appellant that any such comments or materials submitted by the employing establishment were subject to review and comment by him or his representative.

Appellant does not contest the Board's prior decision that he forfeited his right to compensation effective June 27, 2006 pursuant to 5 U.S.C. § 8148(a) (forfeiture of benefits by convicted felons). The Board reaffirms its prior decision on the issue.

Appellant does contest the Board's finding that he forfeited his right to compensation for the 15 months covered by his July 5, 2005 Form EN1032. The Board has duly considered his arguments and reaffirms its prior decision on the issue. It is a matter of record that appellant defrauded the government when he knowingly omitted earnings on his November 8, 2004 Form EN1032. Appellant argues that the Board should ignore this fact in determining whether he continued that same conduct after November 8, 2004, but the Board finds that his conviction is relevant evidence. It has a tendency to make the existence of the knowledge element more probable after November 8, 2004 than it would be without the conviction. That his indictment for the period after November 8, 2004 was dismissed as part of a plea agreement does not mean

¹ *Paul Raymond Kuyoth*, 27 ECAB 498 (1976).

² *See Virginia Faye Gabbert (Byron Lowell Gabbert)*, 21 ECAB 149 (1969); *Piotr W. Gul*, 17 ECAB 714 (1966).

³ *T.R.*, Docket No. 07-675 (issued August 17, 2007). The Board found that the language of 20 C.F.R. § 10.431(c) is specific and mandatory.

he was innocent of the charge and the Office need not establish the knowledge element beyond a reasonable doubt. Further, the Board did not, as appellant asserts, rest its decision concerning the July 5, 2005 Form EN1032 “on the sole fact” that he pleaded guilty to falsifying his November 8, 2004 form. That was but one factor the Board considered in weighing the evidence.

IT IS HEREBY ORDERED THAT appellant’s December 12, 2007 petition for reconsideration is granted and request for oral argument denied. The Board’s November 16, 2007 decision is modified in part and reaffirmed in part. The case is remanded to the Office of Workers’ Compensation Programs for further action consistent with this order of the Board.

Issued: July 18, 2008
Washington, DC

David S. Gerson, Judge
Employees’ Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees’ Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees’ Compensation Appeals Board